The United States Supreme Court granted certiorari review of the decision of the Colorado Supreme Court to enjoin enforcement of Amendment 2 to the Colorado Constitution. Romer v. Evans, 94-1039. Amendment 2, adopted by a majority of the state's voters in November 1992, provides:

> Neither the State of Colorado, through any of its branches or departments, nor any of its agencies, political subdivisions, municipalities or school districts, shall enact adopt or enforce any statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or otherwise be the basis of, or entitle any person or class of persons to have or claim any minority status, quota preferences, protected status or claim of discrimination. This Section of the Constitution shall be self-executing.

The amendment deprives the legislative, executive and judicial branches of state government, state universities, counties, municipalities and school districts of the power to remedy "any claim of discrimination" based on "homosexual, lesbian or bisexual orientation."

Thus, as amended, the state's basic charter would authorize discrimination against lesbians, gay men and bisexuals and immunize such discrimination from redress at any level of government. Amendment 2 repeals the portion of existing laws that prohibit discrimination on the basis of homosexual orientation -- such as local fair housing and fair employment ordinances, the state insurance code provisions that prohibit discrimination in underwriting practices for health and life insurance, and the governor's executive order that prohibits discrimination in state employment -- and prevent any government response to future problems that lesbians or gays may encounter.

The plaintiffs in Romer v. Evans are lesbians and gay men who had worked to obtain legislation or government policies that protect them from discrimination. The cities of Denver, Boulder and Aspen and the Boulder Valley School District also are plaintiffs. The Colorado Supreme Court ruled that Amendment 2 violates the Fourteenth Amendment to the United States Constitution because it burdens the fundamental right of "an independently identifiable class of persons" to participate in the political process. The amendment is subject to strict judicial scrutiny because it impinges upon a fundamental right. The court determined that Amendment 2 did not serve any compelling state interest by the least restrictive means possible.

The Colorado court relied upon U.S. Supreme Court precedents that overturned citizen initiatives intended to stop civil rights progress, particular the efforts of African-Americans to obtain fair housing. One of the officials of Colorado for Family Values, the group that sponsored Amendment 2, testified that the purpose of the amendment was "simply [to] close the lid on the entire issue of [civil rights for gays] here in Colorado."

The question that the state presented to the U.S. Supreme Court is

> Whether a popularly enacted state constitutional amendment precluding special state or local legal protections for homosexuals and bisexuals violates a fundamental right of independently identifiable, yet non-suspect, classes to seek such special protections.

In addition to defending the Colorado Supreme Court decision, the plaintiffs will argue that Amendment 2 violates equal protection because it is not rationally related to a legitimate state purpose.